

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BERNELL DUPLESSIS, individually,

Plaintiff,

V.

GOLDEN STATE FOODS, a Delaware Corporation doing business in Washington State; DANIEL VAN HOOZER, individually, and JANE DOE VAN HOOZER, individually, and the marital community composed thereof

Defendants.

CASE NO. C06-5631RJB

ORDER GRANTING
PLAINTIFF'S MOTION TO
WITHDRAW AMENDED
COMPLAINT

This matter comes before the Court on the Plaintiff's Motion to Withdraw Amended Complaint Pursuant to the Court's Order of December 8, 2006 (Dkt. 14). The Court has considered the pleadings filed in support of and in opposition to the motion and the file herein.

I. FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff has been an employee of defendant Golden State Foods for twelve years and brings the following claims: (1) racial discrimination in violation of RCW 46.60 *et seq.*; (2) hostile work environment in violation of RCW 46.60 *et seq.*; (3) disparate treatment in violation of RCW 46.60 *et seq.*; (4) disparate impact in violation of RCW 46.60 *et seq.*; (5) unlawful retaliation; (6) negligence, negligent infliction of emotional distress, and negligent hiring, retention, and supervision; (7) intentional infliction of emotional distress, outrage, assault, and battery; and (8) equal rights under the law (42 U.S.C. §1981 and Title VII of the Civil Rights Act of 1964). Dkt. 1-2, Exh. OO at 25-26 (Second Amended Complaint), Dkt. 6 at 3. On October 30, 2006, the defendants removed the case to federal court, Dkt. 1.

ORDER
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On December 6, 2006, after the answer was filed and while the plaintiff's Motion to Remand/Amend Complaint and to Remand to Washington State Superior Court (Dkt. 6) was pending, the plaintiff filed an amended complaint omitting his state law claims. Dkt. 10. The plaintiff's motion to amend was ultimately denied, and the plaintiff now seeks permission to withdraw the amended complaint. Dkt. 13. The defendants have not opposed the motion.

II. DISCUSSION

Federal Rule 15 governs amendment and provides as follows:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served. . . . Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

11 Fed. R. Civ. Pro. 15(a). Here, the amended complaint was filed after the defendants filed their
12 answer, but it appears that the plaintiff lacked written consent from the defendant. Because the
13 plaintiff was not granted leave to file the amended complaint, the amended complaint should be
14 stricken. It will remain in the electronic file but will have no force or effect.

III. ORDER

Therefore, it is hereby

17 **ORDERED** that the Plaintiff's Motion to Withdraw Amended Complaint Pursuant to the
18 Court's Order of December 8, 2006 (Dkt. 14) is **GRANTED**, and the Amended Complaint (Dkt.
19 10) is **STRICKEN**.

20 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel
21 of record and to any party appearing *pro se* at said party's last known address.

DATED this 9th day of January, 2007.


Robert J. Bryan
United States District Judge